Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	WC Docket No. 02-112
	)	
2000 Biennial Regulatory Review Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules	)	CC Docket No. 00-175

COMMENTS OF GVNW CONSULTING, INC.

In response to the Commission's Further Notice of Proposed Rulemaking (FNPRM)[1], GVNW Consulting, Inc. respectfully presents its comments for the Commission's consideration. GVNW Consulting, Inc. is a management-consulting firm, which provides consulting services to independent telephone companies. We offer the following comments on the appropriate classification of incumbent local exchange carriers' (independent LECs) provision of in-region, interstate and international interexchange telecommunications services.

SUMMARY OF COMMENTS

In its FNPRM released on May 19, 2003, the Commission seeks comments on the dominant nature of RBOCs and rural independent carriers who do not have separate

[1] *In the Matter of Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements,* WC Docket No. 02-112, *2000 Biennial Regulatory Review of Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules,* CC Docket No. 00-175, Further Notice of Proposed Rulemaking, rel. May 19, 2003.

affiliates for the provision of toll services. GVNW represents rural carriers (carriers with less than 2% of the nations access lines). GVNW's comments will specifically address the appropriateness of application of dominant carrier status to rural ILECs in this matter. Specifically, our comments will state that:

1) The provisions for which the Commission is seeking comment (sections 271 and 272 of the Commission's rules) pertain to RBOCs only and are not applicable to non-RBOC companies.
2) Current Commission rules exempt rural carriers providing toll services strictly through resale from the dominant carrier issue.[2]
3) Rural carriers do not have the ability to affect monopoly pricing or costing practices as they:
    a. Are generally governed by pooling procedures through NECA, rendering concerns about individual company access pricing efforts moot.
    b. Do not own or own very limited portions of the overall facilities utilized in completing calls.
    c. Are frequently subject to price squeezes through retail toll rate averaging. Larger regional IXC's serving geographic areas greater in size than the rural carriers territory (frequently including metropolitan areas) can average the lower cost of these areas in their pricing, thereby making competitive retail pricing for small rural ILECs difficult.

[2] 47 C.F.R. § 64.1903(b)(1).

4) Competitive alternatives such as wireless are becoming increasingly prevalent in the markets served by rural companies. These alternatives continue to erode the rural LECs access minutes and toll service offerings. Designation of wireless providers as eligible telecommunications carriers (ETC) indicate that state commissions as well as the FCC view these services as comparable alternatives for end users.

APPLICATION OF TELECOMMUNICATIONS ACT

The applicable sections of the Telecommunications Act at issue in this instant proceeding, Sections 271 and 272, are found in Part III of the Act. Part III of the Act is titled, " Special Provisions Concerning Bell Operating Companies". Section 271 of the Act is titled, "Bell Operating Company Entry into InterLATA Services". These sections have never been, nor were they intended to be, applicable to rural independent companies. Rural providers in many states have had the ability to provide interLATA toll services in their service areas and regions. The sunset of the provisions in Sections 271 and 272 should have no impact in regards to the services provided by rural carriers. By including the rural companies in these requirements, the Commission has incorporated them into a mechanism that was never intended for consideration on the rural carriers. The legislation specifically identified the RBOCs and excluded all other providers.

PROVISION OF SERVICE THROUGH RESALE

The Commission has previously clarified the treatment of independent LECs providing service entirely through resale, which was defined as, "LECs that provide in-region, long distance services using no interexchange switching or transmission facilities or capabilities of the LEC's own".[3] The Commission found and concluded that, "LECs that provide long distance services solely on a resale basis can be exempted from the separate legal entity requirements, and instead be required to provide these services through a separate corporate division, without substantially harming our ability to address potential anticompetitive conduct."[4] LECs providing toll services through resale were found to be advantageous as they facilitated entry of the independent LECs into the long distance markets. Section 64.1903 of the Commission's rules also allows for an exemption of the separate affiliate requirements for resellers. This treatment of LECs providing toll services strictly through resale should be continued without change in this proceeding

ABILITY OF RURAL COMPANIES TO AFFECT ANTICOMPETITIVE PRICING

The Commission's goal in this proceeding is primarily focused upon limiting the ability of an LEC to engage in anticompetitive pricing behavior. The FNPRM focuses primarily on the ability to affect cost shifts or misallocations to access service prices thereby squeezing competitors; and the ability to restrict output and unilaterally raise and sustain prices above competitive levels by restricting its own output. Rural companies have the capacity to participate in neither of these anticompetitive pricing techniques.

Rural companies do not have any effective ability to alter the access service prices faced by competitors, thereby creating price squeezes for two basic reasons. First, most rural carriers participate in the NECA pooling tariff for access. To the extent that the pool takes the costs of a multitude of carriers in determining its access rates, the individual

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3 In the Matter of Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; CC Docket No. 96-149 and, *Policy and Rules Concerning the Interstate, Interexchange Marketplace;* CC Docket No. 96-61, *Leaco Rural Telephone Cooperative, Inc., Petition for Waiver,* CC Docket No., 96-149, Second Order on Reconsideration and Memorandum Opinion and Order, rel. June 30, 1999, at para. 22.

[4] Id.

decisions or actions of any single company will not significantly impact the pool. NECA is a pooled tariff for approximately 1,240 companies. Of these companies, GVNW estimates that 20 companies account for almost 40% of the total lines of the pool. For a majority of the participants in the NECA pool, given their relatively small percentage of the overall pool costs, their individual costs cannot significantly impact the pooled access rate. This inability to affect the overall access rate of the pool should preclude any small rural company from engaging in misallocation of cost for the purposes of an anticompetitive price squeeze. Such a strategy would simply not be practical in light of the individual company's impact on the overall pool. Therefore, there would be no rational reason to participate in a behavior of this nature and no appreciable impact even if a company attempted to do so.

Second, rural companies make up an extremely small percentage of the overall access costs for an interexchange carrier. The sum total of any individual rural LEC's access rates as calculated in the costs of a regional IXC would generally be lost in rounding. There could be no affect from a small rural carrier attempting to influence the prices offered by its competitors. It would be simply irrational to engage in cost shifting behavior, as an effort to influence the price of competitive toll providers through increasing access prices, where those costs to the IXC would be irrelevant. The average pricing requirements found in federal statutes require IXCs to average their prices in rural and non-rural areas.[5] This averaging process would again make an individual rural company's incentive and ability to engage in anticompetitive pricing of access services ineffectual, as it could not materially alter the pricing decisions of its competitors.

[5] 47 U.S.C. § 254(g).

The toll averaging requirements of Section 254(g) also impact the rural LEC's ability to affect toll retail prices. Contrary to the assertions or questions raised in the FNPRM that LECs can sustain higher toll rates through restricting output, averaging requirements for the retail prices of larger regional IXCs actually result in a price squeeze on rural LECs offering toll services. Because toll services are offered at the same retail rate in rural areas as urban areas, toll rates offered by larger IXCs are often lower in rural areas than can be offered by the incumbent independent company. An independent rural NECA company facing the composite NECA access rates of $0.02618 for an originating access minute[6] of use has to contend with carriers averaging RBOC originating access cost such as $0.002469.[7] Interexchange companies that weight a significantly larger percentage of RBOC minutes at this lower rate will gain a competitive advantage over the rural incumbent faced with a much higher percentage of their minutes at a higher rate. Rural companies will therefore have to provide toll services at an overall higher retail rate, taking into account these higher underlying access costs, or take less of a margin on their toll services. As these rural independent companies cannot exert any kind of market power in this instance, they should not be subject to the requirements of a dominant toll carrier. In fact, it is only through competing through non-price mechanisms such as quality of service, business office contacts in local markets, and bundling that these small rural companies can compete at any level.

[6] Assumes NECA Tariff F.C.C. No. 5, effective as of April 1, 2003 rates for CCL of $0.002, local switching of $0.020462, transport term of $0.001228, and transport per mile rate of $0.000249 times 10 miles.
[7] Assumes Qwest Corporation Tariff F.C.C. No. 1, effective August 3, 2001, rates for CCL of $0.0, local switching of $0.001968, transport term of $0.000231, and transport per mile rate of $0.000027 for 10-mile band.

AVAILABILITY OF ALTERNATIVE SERVICE PROVIDERS

Rural exchange companies continue to experience a loss in access minutes. In a sampling of GVNW's client companies, over 54% have experienced a zero growth[8] or loss in total access minutes since the year 2000. Twenty seven percent have lost more than 5% of their access minutes. Broken down by jurisdiction, 73% of the companies have no growth or lost interstate access minutes (18% losing more than 5%); and 82% have zero or negative growth on the intrastate side (27% losing more than 5%). This loss in access minutes is at least in part caused by an increase in alternative service providers, primarily wireless companies. Wireless companies, in particular, are able to utilize a completely separate set of facilities in providing their services; offering alternatives which replace LEC's facilities in total or in part. Given that this alternative is either evident currently in the marketplace or can enter rural markets with relatively little effort, rural LECs will manage their companies as if competition exists. This concept, "contestability", provides sufficient oversight on the actions of small rural companies such that further accounting and legal safeguards are not required.

DOMINANT CARRIER IMPACT ON RURAL LECS

Designation of rural LECs as dominant carriers would have a significant impact on these rural carriers and would affect their willingness and ability to provide toll services. Significant legal and regulatory costs would be imposed upon a rural company entering the toll service line of business should it be required to establish and maintain a separate affiliate. In addition, those companies providing toll services without the use of a separate affiliate company will be faced with a dominant classification. Should this designation be

[8] Within $\pm$ 5% of year 2000 minute of use demand.

applied to rural carriers, they could be forced to become subject to the submission of onerous cost support for rate filings and the imposition of suspension of rate changes for up to 120 days. The impact of these regulations on rural companies could preclude them from offering toll services.

Should any determination be made to make rural companies dominant carriers; a period should be established whereby each company would be allowed to determine if transition of their toll operations to a separate affiliated company could be completed. In instances where the rural company determined that conversion to a separate affiliate would be appropriate, waivers of the Commission's slamming rules should also be granted so that the transition to the affiliate could take place with a minimum of operational costs and customer confusion.

CONCLUSION

The Commission seeks input on the ability of rural independents to engage in anticompetitive pricing practices through the provision of toll services without the aid of separate affiliate regulatory oversight and requirements. The Commission has previously found that rural carriers providing service solely through resale should not be subject to such requirements and there is no reason to change that requirement now. As outlined through GVNW's comments, rural independent companies do not have the ability to impact the overall pricing of retail toll services. They do not posses the ability to effectively influence either the underlying access costs of an interexchange carrier, nor to influence the retail toll price offered to customers. The contrary is in fact true, rural LECs are disadvantaged in the provision of their toll services by the fact that they do not serve large enough geographical areas to incorporate a meaningful allocation of lower priced access charges associated with lower cost RBOC areas into their averaged retail toll rates. Designating rural carriers as dominant simply because they provide toll services through a division of their company as opposed to a separate affiliate would put undue hardships on these providers and damage the overall ability of these companies to provide basic services to customers in its areas. GVNW would strongly suggest that the provisions of sections 271 and 272 at issue in this matter not be applied to rural independent companies, and that there be no impetus to designate such companies as dominant carriers.

Respectfully submitted,

- *Electronically filed @6/30/03*-

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